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## **Auditing**

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## A. Introduction

1 Public servants, officials, and executive agencies hold authority to take a wide variety of actions, and in general, they hold considerable power. They are also subject to a duty to maintain transparency, and to report to the public regarding their activity.

2 The government authorities are charged with the management of the country's economy and with the maintenance of public order and security, in the name of and on behalf of the public. They are, therefore, required to respect the law, comply with it, and maintain it, and to adhere to the principles of good administration and respect for the → *rule of law*.

Supreme Audit Institutions ('SAIs') have a key role in maintaining system-wide supervision of the government, and they promote government based on law—government which obeys the principles of the legal system. The principles of → *good governance* (transparency and political accountability; fairness and equity; efficiency and effectiveness; respect for the rule of law; and a high standard of ethical behaviour) form the basis of proper government, and compliance with these principles is subject to the review of the SAIs.

3 Most countries, and the vast majority of democratic countries in particular, have established an SAI, based on either a constitutional or a statutory foundation. These institutions are very important gate-keepers; their task is the supervision and control of the conduct of public servants and the government authorities. One of the most important functions of the SAIs is to make certain that the executive authority entities operate professionally and with integrity, and that public servants do not take advantage of their status and their authority. The audit institutions assist the legislatures in supervising the executive branch, by conducting ongoing and accurate reports regarding the governmental accounting systems.

4 The practical auditing carried out by the independent audit institutions, who act outside of the executive branch of the government, forms an important component of the preservation of checks and balances. The role of these institutions is to ensure the proper activity of the executive power and the enforcement of the law and of the provisions of → *administrative law*. Audit, carried out by audit institutions, makes an essential contribution to the → *separation of powers*, to its formulation, and its preservation (Brenninkmeijer 344).

## B. The Historical Development of State Audit

### 1. Ancient Times

5 External auditing of government activity appeared long before the development of modern governmental structures. Audits were conducted in ancient times in many different cultures and widely separated geographic regions—such as Egypt, Babylonia, and Greece; in China, public officials were required to report to the public about their actions in the year 1,100 BCE, some 3,000 years ago (Chinese National Audit Office 131). Audit of government entities existed in the Roman Empire as well. In the year 200 BCE, there were account officials (*quaestors*) operating throughout the empire, whose role was to audit the books of account of the local governors in the countries subject to Roman rule. At the end of their field examinations, these officials returned to Rome and reported their findings. This method of operation, which included 'hearing' (*audire*) and reporting was the source for the English word 'audit', which means—*inter alia*—the audit of books of account (Stone 286).

## 2. Medieval Period

6 New techniques of external audits developed between the years 500 to 1599. In England, William the Conqueror (1027–1087) established a system for auditing the kingdom's inventory, in order to make tax collection and the control of tax money more efficient (→ *taxes*). Henry I (1100–1135) established the Royal Treasury and appointed officials called auditors who were in charge of auditing accounts, in order to prevent corruption and embezzlement. The English monarchs who followed him continued to conduct audits of the kingdom's finances (Lee and Azham 4). In France, financial aspects of public administration were audited by the King's Council (*Conseil du Roi*, in Latin *Curia Regis*). A new judicial institution, the *Chambre de Comptes* or Chamber of Accounts, was established in 1320. This was an independent entity with legal power to adjudicate and decide matters relating to the management of the king's accounts and his financial policies. That same year, in Belgium the Duke of Burgundy, Count Flanders, established an SAI, the 'Chamber of Accounts', the purpose of which was to supervise the ducal accounts (Tara and Gherai 710–71).

## 3. Modern Period

7 The first signs of modern state auditing appeared in the eighteenth and nineteenth centuries, along with the collapse of the totalitarian regimes and the slow growth of democracies. Indeed, modern state auditing is closely tied to the growth of democracy and the increased recognition of the need for government institutions and of those who head them to be held accountable to the public. The roles played by the SAIs, in their various forms, changed gradually over the years. They were given new roles, and the purpose of the state audit was changed accordingly. These audit institutions developed against the background of societal, economic, and governmental changes that took place in the countries themselves, and also in light of global changes that affected the design of these institutions, such as processes of democratization which began in the Western world in the eighteenth and nineteenth centuries. Additionally, among countries with audit institutions, those institutions have had reciprocal effects on each other—through contacts maintained between them that allowed them to learn from each other and to develop their audit abilities.

## 4. The Development of Modern State Audit

8 The development of modern auditing can be divided into two periods, the first being the period until the Second World War, and the second being the period from the end of the war onwards. During the first period, SAIs dealt mainly with the examination of the financial regularity of the state institutions; they examined, in the main part, whether funds had been expended in accordance with the objectives designated for them and whether there were deviations from expense approvals. After the Second World War, the representatives of several audit institutions met in Switzerland and decided to establish a forum of institutions that were engaged in government audit. In 1953, the forum held its first conference, in Cuba's capital city of Havana, with the participation of the representatives of 34 countries. At the conference, the participants established INTOSAI, the International Organization of Supreme Audit Institutions (INTOSAI: 50 Years (1953–2003) 14). Since its establishment, the organization has been engaged in the creation and implementation of international standards for government auditing in order to, among other things, improve public sector auditing throughout the world and to raise the skill level, status, and impact of the government audit institutions. It should be noted that the international standards promulgated by the organization do not have any binding status, and the audit institutions of the states who are members of the organizations are not obligated to act in accordance

with them. As of 2019, INTOSAI has 194 full members, five associate members, and one affiliate member.

**9** During the second period, the scope of state audit was expanded from merely checking the financial regularity to audit of expenses, while examining aspects of economy, efficiency, and effectiveness. Elmer B Staats, who headed the US General Accounting Office from 1966 to 1981, coined the phrase ‘the three E’s’ (referring to economy, efficiency, and effectiveness) as a description of these new areas of audit. Modern audit is not limited to financial audit and the production of accounting reports—it now examines performance quality of the government agencies’ work and the legality of the government’s activities. These areas of activity are reflected in an audit standard published by INTOSAI in 2004 (ISSAI 300: Fundamental Principles of Performance Auditing).

## **5. Government Audit in the Modern Age**

**10** In the not so distant past, state audit dealt with traditional audit areas such as document verification and financial audits. In the modern era, state audit institutions began to enter additional areas and conduct performance audits and audits of returns on investments (value for money audit) and to examine more carefully the economy, efficiency, effectiveness, and ethics aspects of government work. The expansion of the scope of audit was expressed not only through the particular subjects that were examined, but also in terms of the identity of the institutions that were audited. In the past, state audit focused on central government and the central administrative institutions, and it has now expanded to reach other branches of government and other public entities.

## **C. Constitutional Models**

**11** Some 191 countries have anchored the establishment and existence of an SAI in their constitution, and have established a connection between the SAI and the country’s legislative body or general assembly. Naturally, the audit institutions in the various countries are differentiated from each other in terms of their structure, their powers, and their areas of responsibility, which were shaped and developed over years in accordance with the nature of the countries in which they exist. The differences derive from the constitutional arrangement relating to the audit institution and the relevant political and societal influences within each country. The following are the three main constitutional models according to which the state audit institutions operate: the Napoleonic model, the Westminster model, and the Council model.

### **1. The Napoleonic Model**

**12** The source of the Napoleonic model is France, and it is followed in the Latin European countries such as Portugal (Constitution of the Portuguese Republic: 2 April 1976 (as Amended to 2005), Art. 214 (Port)) and Italy (Constitution of the Republic of Italy: 27 December 1947 (as Amended to 2012), Art. 100 (It)) and in several Central American and South American countries (Constitution of El Salvador: 15 December 1983 (as Amended to 2014), Art. 195 (El Sal); Constitution of Uruguay: 1 January 1967 (as Amended to 2004), Art. 208 (Uru)) and in Africa (Constitution of the Kingdom of Morocco: 17 June 2011, Art. 147 (Morocco); Constitution of the Republic of Guinea: 2010, Art. 116 (Guinea)). According to this model, the audit institution has the structure of a court of accounts/audit, and holds judicial powers for carrying out the audit of accounts, budgets, and expenses of the governmental institutions. The audit is carried out by judges who have judicial independence (→ *independence of the judiciary*). The audit institutions that operate according to this model focus on examining the government agencies’ compliance with the laws, regulations, and rules of administrative law, and they are authorized to reach judicial decisions in these areas (Dye and Stapenhurst 5–6). In general, because they are actually

judicial institutions, audit institutions that operate according to the Napoleonic model have the authority to impose obligations and compel compliance on public officials and governmental bodies, as well as the authority to issue judicial orders.

## **2. The Westminster Model**

**13** The Westminster model is the most common one among European countries (Instrument of Government (SFS nr 1974:152): 1974 (as Amended to 2012), c 13, Art.8; Constitution of the Republic of Croatia: 22 December 1990 (as Amended to 2013), Art. 53A (Croat); Constitution of the Republic of Estonia: 28 June 1992 (as Amended to 13 August 2015), Art. 134 (Est)), and it is also used in Africa (Constitution of the Federal Democratic Republic of Ethiopia: 8 December 1994, Art. 101 (Eth); Constitution of Kenya: 27 August 2010, Art. 229 (Kenya) and in Asia (Constitution of the Kingdom of Thailand: April 6, 2017, s 241 (Thai); Constitution of the Republic of Singapore: 9 August 1965 (as Amended to 2016), Art. 148F (Sing); Basic Law: The State Comptroller: 15 February 1988, Art. 1 (Isr)). In countries that use this model, the audit institution is headed by the State Comptroller or an auditor-general ('AG') who holds the authority to carry out the audits and is responsible for doing so. The State comptroller operates as an independent entity. Their reports have the force of a recommendation, and they lack judicial authority. The audit is carried out by the professional employees in the State Comptroller's office, and the audit reports are presented to the parliament or general assembly, generally at dates prescribed by law. The audit reports include a report on the financial operations and of the activities of the government entities (Kayrak 62).

## **3. The Council System Model**

**14** This model, which is also known as the collegial model, is common in Asia (Constitution of Japan: 3 November 1946, Art. 90 (Japan); Constitution of the Republic of Korea: 12 July 1948 (as Amended to 29 October 1987), Sec. 97 (S Kor); Constitution of the Republic of Indonesia: 1 January 1945 (as Amended to 2002), Art. 23E (Indon); Constitution of the Republic of the Philippines: 2 February 1987, Art. IX s 1 (Phil)). The audit institutions that operate in accordance with this model are similar to the audit institutions that operate according to the Westminster model. The audit powers are given to a council, commission or board of audit, which is headed by a president or chairman who, as a practical matter, serves a supreme auditor, similar to the AG.

## **D. Independence and Self-Sufficiency Models**

**15** All of the models for the structure of an audit institution, and all the various operation formats give rise to questions regarding the preservation of independence and the status of the audit institution within the government structure. These are inevitable questions as the audit institution is itself, necessarily, a part of the state, yet plays an important part in supervising the functioning of the executive branch and its departments. This also gives rise to the close connection between the audit institution and the legislative branch, for whom supervision of the executive branch is one of its main functions.

**16** Indeed, the most basic principle of the SAIs' activities is the principle of independence and self-sufficiency. The justification for this principle is the necessity that the SAI be free from any possibility of external involvement, either direct or indirect, in order to carry out its function properly. This principle is anchored in section 5 of the Lima Declaration on Guidelines on Auditing Precepts, adopted at the INTOSAI Congress of 1977. The audit institution's independence is generally anchored in the constitution or a statute, and it includes the institution's financial-budgetary independence, as well as its administrative and professional independence. The financial-budgetary independence is reflected in the securing of financing needed for the audit institution to function effectively. The

administrative independence is expressed in the audit institution's ability to hire and fire its own employees and its ability to determine their terms of employment and compensation. Professional independence is expressed in the SAI being empowered to determine the subjects that it will audit, the scope of its audits, the times at which the audit will be carried out, and the date for the publication of its findings (Goolsarran 30-1). Yet, audit findings are published pursuant to directives and limitations that take into consideration issues such as the country's security, its foreign relations, and other considerations. Alongside the securing of the audit institution's independence, it is also necessary to ensure the independence of the individual who heads it, by determining, in advance, the length of their term of office, the terms of their compensation and status (Geist and Mizrahi 16). In light of the great importance of the independence of the audit institutions, INTOSAI in 2007 adopted the Mexico Declaration on the Independence of SAIs, which established the eight basic pillars of SAI independence.

**17** A unique example of an audit institution that fulfils the principle of independence and self-sufficiency is the South African AG. The office of the AG is the only constitutional institution in South Africa that enjoys true financial and administrative independence (Woolman and Schutte 24B-6), as the law that establishes the powers of the AG satisfies the two tests set by the → *Constitutional Court of South Africa* for the determination of the independence of constitutional institutions (*New National Party of South Africa v Government of The Republic of South Africa* (1999) (S Afr)): the tests of financial independence and of administrative independence. According to the financial independence test, the institution must be budgeted in a manner that allows it to carry out its function, and this budget must be determined by the parliament and not by the government. According to the administrative independence test, the government must not intervene regarding the institution's mode of operation or in the appointment of its employees (Public Audit Act (Act No. 25/2004): Administration of Auditor-General, Chap. 4 (S Afr)). The State Comptroller in Israel is an additional example of an institution that enjoys a high level of independence (Basic Law: State Comptroller, Art. 6 (Isr)), as it is granted financial-budgetary independence (Basic Law: State Comptroller, Art. 10 (Isr)), administrative independence (State Comptroller Law, 5718-1958 (Consolidated Version), s 22 (Isr)), and professional independence which includes, *inter alia*, the power to examine 'any such other matter as he may deem necessary' (State Comptroller Law, 5718-1958 (Consolidated Version), s 10 (Isr)).

**18** The status of the audit institution within the government structure depends, to a great degree, on the country's characteristics and the history of its governmental tradition. The relationship between a country's audit institution and its parliament will generally be based on one of three models: an audit institution which is part of the legislative branch; an audit institution which is part of the executive branch and whose work is directed by the parliament; or an audit institution which is not tied to either the executive or the legislative branch and which operates in a completely independent manner and functions as a sort of fourth branch of government—the supervisory or audit branch (OECD 14).

**19** The SAI of the US, the Government Accountability Office, which is headed by the Comptroller General, is considered an independent authority, having no dependence on the executive branch. Its independence is reflected in the fact that its budget is set in the proposed budget submitted by the president, and cannot be changed during the budget year. Nevertheless, this institution is customarily viewed as being part of the legislative branch (it is sometimes known as the 'long arm of Congress') and, as noted by the → *Supreme Court of the United States*: 'The Comptroller General's current statutory responsibilities on behalf of Congress are fully consistent with the historic conception of the Comptroller General's office ... Congress has defined the Comptroller General as being a part of the Legislative Branch' (*Bowsher v Synar* (1986) (US)). The Government

Accountability Office initiates audits pursuant to a mandate given to it by legislation or by a congressional resolution reached pursuant to a written request received from the Senate or House of Representatives leadership, or pursuant to requests from individual members of Congress. In practice, most of the audits are carried out in response to a request from Congress and only a minority are carried out at the initiative of the office itself (Abikoff 1540; US Government Accountability Office 3).

**20** Despite its independence, the Australian National Audit Office is deemed a part of the legislative branch, as it is an independent office of the Parliament (Auditor-General Act: 1997 (as Amended on 1 July 2016), s 8(1) (Austl)). The AG has the power to establish the subjects of the audit, and they are independent in exercising their authority, but they must consider the order of priorities established by Parliament (Auditor-General Act: 1997, s 10 (Austl)).

**21** The German audit institution, the *Bundesrechnungshof*, is guaranteed judicial independence in the Basic Law for the Federal Republic of Germany. It is an independent federal authority, subject only to the law. It submits its annual reports to Parliament and to the Federal Government. Other governmental entities may not order the *Bundesrechnungshof* to carry out audits (Basic Law for the Federal Republic of Germany: 23 May 1949 (as Amended to 13 July 2017), Art. 114 (Ger); Bundesrechnungshof Act: 11 July 1985, Art. 1 (Ger)).

**22** The National Audit Office of the People's Republic of China, which is directly subject to the State Council (Constitution Law of the People's Republic of China: 4 December 1982 (as Amended to 11 March 2018), Art. 91 (China)), is an example of an audit institution that is part of the executive branch. This is a fairly unique model, not common among Western democracies (Posner and Shahan 495).

**23** Each of these arrangements concerning the independence of the SAIs described above reflects a balance between the level of its independence and its duties to its country's parliament. The professional independence that allows the state comptroller to choose the areas the office will be auditing is a basic condition for the proper functioning of the comptroller's office. In most cases, this independence is preserved even when parliament has the power to propose subjects for audit, to instruct that certain audits must be performed or to establish an order of priorities for state audit work.

## **E. The Constitutional Role of Supreme Audit Institutions**

**24** The key roles of the SAIs are, as stated, to supervise the activities of the governmental institutions, to promote accountability, and to publish the findings of their audits. The audit institutions must therefore examine and assess the behaviours of the audited institutions, and they do this by referring to specific norms. In practice, the state audit is the product of an independent assessment of administrative activity, or modes of performance methods and of operational results. This assessment is carried out by comparing the administrative activity of the audited body with the norm, the standard or the model that is used as criteria in the audit. The various criteria can be found in the constitution or the statute that regulates the activity of the audit institution. The key norms that guide auditing bodies in general are legality, regularity, ethics, or integrity, and in performance audit—economy, efficiency, and effectiveness (Lima Declaration on Guidelines on Auditing Precepts, s 4; Pinteá and Achim 235–42).

## **1. Audit of the Legality of Activity**

**25** This type of audit is an examination of whether the activity of a government entity or official was within the framework of their authority, and whether the entity or official are in full compliance with the requirements of the law. The audit reports for this type of audit refer to any deviation that is found as a deficiency, and can also include a recommendation of steps to be taken in order to correct the deficiency. If the deviation from the statutory provisions is a severe one, reaching the level of a criminal offense, many countries have a mechanism according to which the SAI will report the matter and turn over the handling of the criminal matter to the authorized parties (Law No. 94 of 8 September 1992 (re-issued) on the Organization and Operation of the Romanian Court of Accounts, Art. 33(4) (Rom); Audit Rules of the Bundesrechnungshof (1997), Art. 27(3) (Ger); Board of Audit Act (1947), Arts 31–3 (Japan); Act LXVI of 2011 on the State Audit Office of Hungary, Art. 30 (Hung)) (Dye and Stapenhurst 14).

## **2. Regularity Audit**

**26** This includes an examination of the audited body's expenses and its actions in order to determine that the financial actions were properly recorded; and in a number of situations it also includes an approval of the periodic reports of income and expenses, an examination of the state budget, and an examination of the manner in which the internal guidelines and directives that regulate the various processes that the audited body performs are implemented. An example of this would be an examination of whether the authorized parties approved the examined activity.

## **3. Audit of Economy, Efficiency, and Effectiveness (Performance Audit)**

**27** This type of audit examines actions and their outcomes and is based on interrelated norms—the norms of economy and effectiveness, which are two sides of the same coin. An economy audit, which is one aspect of a performance audit, examines the outcome from the input side: the audit examines whether the same result or the same outcome could have been achieved by using fewer resources. The efficiency audit, which is the other aspect of a performance audit, examines the result from the output side: whether, using the same resources, a greater output could have been achieved. The effectiveness audit examines the subject's activity from an overall perspective: whether the objectives and goals were achieved in the framework of the realization of the relevant plan, contractual relationship, or project, and whether the desired output was achieved for the resources that were used, ie what value was received for the money invested, and whether the results themselves were satisfactory.

## **4. Moral Integrity Audit**

**28** This type of audit relates to ethics, and deals primarily with the personal behaviour of the public servants, and it relates to situations that do not rise to the level of a suspicion of the commission of criminal or disciplinary offenses (EUROSAI 13). Some audit institutions are given express authority to examine the ethics and morality of public servants, and some of them examine these areas in the framework of the performance audit or the compliance audit (Bostan, Firtescu and Nicula 46–8).



## 5. Additional Roles

**29** Given their high-level constitutional status, many audit institutions have additional roles that are not directly related to state audit. These roles are given to them in light of, among other matters, the institution's place within the governmental framework. In Israel, for example, in a format that is unique to the Israeli case, the State Comptroller is charged with investigating public complaints and attempting to resolve them, in their role as Commissioner for Complaints from the Public (Basic Law: The State Comptroller: 15 February 1988, Art. 4 (Isr); → *ombudsman*). In Canada, the law provides that the AG appoints the Commissioner of the Environment and Sustainable Development; that Commissioner, in turn, is required to act, on behalf of the AG, to submit to Parliament objective, independent analysis and recommendations on the federal government's efforts to protect the environment and foster sustainable development (Auditor-General Act, RSC 1985, ss 15 and 23, c. A-17 (Can)). The Court of Audit in Slovenia may 'make comments on working drafts of laws and other regulations' (Court of Audit Act (1993), Art. 21 (Slovn)). A survey of additional roles held by various audit institutions is included in the 2005 document 'State Audit in the European Union' prepared by the UK National Audit Office (at 15).

## F. Authority to Receive Full Access to Documents and Computerized Information for the Purpose of the Audit

**30** The main work of the audit institutions is to collect data, draw conclusions, and report findings. The basic and central power that is granted to and ensured for all audit institutions, in the relevant constitution or statute, is the authority to obtain full access to information held by the audited bodies (Basic Law: The State Comptroller: 15 February 1988, Art. 3 (Isr); Constitution of the Republic of Cyprus: 6 July 1960 (as Amended to 2013), Art. 116 (Cyprus); Constitutional Act of Denmark: 5 June 1953, Art. 47 (Den); Auditor-General Act, RSC 1985, s 13(1) c. A-17 (Can)) and it is also recognized as a basic power that all audit institutions must have (Lima Declaration on Guidelines on Auditing Precepts, s 10). Nevertheless, the audit institutions sometimes have difficulty obtaining information from the entities they are auditing. For example, a dispute that arose regarding the scope of the power of the Canadian AG to obtain free access to information held by government companies (federal Crown corporations), in the framework of an audit, forced the Canadian AG to take legal action so he could receive such access. In that case, the court held that despite the AG's broad authority to access information, the authority did not include information held by government companies or government cabinet documents (*Canada (Auditor-General) v Canada (Minister of Energy, Mines and Resources)* (1989) (Can)). In the current digital age—a time in which hard copies of notes, notebooks, and files are being replaced by data held in computerized files and electronic mailboxes—the main challenge facing SAIs relates to their authority to access and receive such digital and computerized information.

## G. State Audit in the Human Rights Era

**31** Following the publication of an INTOSAI standard regarding the subject in 2013 (ISSAI 12), the SAIs in many countries began to conduct audits relating to the improvement of the lives of individuals in their countries, and to the protection of human rights. The audit institutions, therefore, began to examine social programmes that provided social services, and began to work to bring the public into the audit processes themselves. The President of

the South African Constitutional Court, Justice Ngcobo, noted the important role that SAIs play in promoting → *social rights* in his speech at the 2010 INTOSAI conference:

The work of Supreme Audit Institutions is crucial to the fulfilment of socioeconomic rights ... The people of each nation have a variety of needs, ranging from health-care and education to communication and transport. Each state has an obligation to fulfil these needs. The ability of each nation to meet this obligation depends on how public funds are spent. Irresponsible government spending, corruption, under-spending and inaccurate budgets will undermine the achievement of these constitutional goals.

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